

SINGLE-FAMILY HOUSE PERMIT

FILE NO.	SF21-022
LOCATION OF PROPERTY	670 Myrtle Street (Approximately 146 feet Northwest of the intersection of Villa Avenue and Myrtle Street).
ZONING DISTRICT	R-2 Two-Family Residential
GENERAL PLAN DESIGNATION	Residential Neighborhood
PROPOSED USE	A Single-Family House Permit for a single-family residence that exceeds 0.45 FAR, (approximately 52.2); the permit would allow for the demolition of an existing single-family residence for a two-story single-family residence with an attached garage, basement, on an approximately 0.07-gross acre site.
ENVIRONMENTAL STATUS	Exempt per CEQA Guidelines 15303 for New Construction or Conversion of Small Structures.
OWNER	Marie and Cris Lau 670 Myrtle Street San Jose, CA 95126
APPLICANT	Kelly Miguel Brad Cox Architect, INC 1155 Meridian Avenue San Jose, CA 95125

The Director of Planning, Building, and Code Enforcement finds that the following are the relevant facts and findings regarding this proposed project:

1. **Project Description.** Single-Family House Permit for a an approximately 1,620-square foot single-family residence that exceeds 0.45 FAR (Floor Area Ratio), (approximately 52.2); the permit would allow for the demolition of an existing single-family residence for a two-story single-family residence with an attached garage, basement, and with an separately approved Development Variance (File No. V21-005) to reduce the front and rear setback requirement to accommodate a single-family home on an approximately 0.07-gross acre site in the R-2 Two-Family Residential Zoning District.
2. **Site Description and Surrounding Uses.** The subject site is located Northwest of the intersection of Villa Avenue & Myrtle Street, approximately 146 feet from Villa Avenue. The site is currently developed with an approximately 790-square foot single-family

residence with a detached garage. The site is surrounded by single-family residences to the north, east, south, and west. The average size residents that share the same frontage as the project site are approximately 1,687 square feet.

3. **General Plan Conformance.** The subject site has a designation of Residential Neighborhood use on the adopted Envision San José 2040 General Plan Land Use/Transportation Diagram. The new construction retains the existing single-family use, the new construction incorporates architectural features similar to those of the single-family residence, thereby preserving the existing character of the neighborhood and is consistent with the Residential Neighborhood General Plan land use. The proposed project is consistent with the following General Plan Policy:

Land Use Policy LU-11.6: For new infill development, match the typical lot size and building form of any adjacent development, with particular emphasis given to maintaining consistency with other development that fronts onto a public street to be shared by the proposed new project.

Analysis: The site is an existing subdivision with an existing residential development. The project would occupy the same site with similar building footprint as the existing structure. The massing is consistent with the surrounding single and two-story residents that are on the same public street frontage.

4. **Development Variance Findings.** The subject site is located in the R-2 Two-Family Residential Zoning District.
- a. Under the provisions of Section 20.30.1300 Development Variances and Development Exceptions of the San José Municipal Code, variances hereinafter referred to as "development variances," to the height, number of stories, frontage, setback, coverage, density, area, off-street parking, fencing, loading and landscaping requirements and regulations of this title.
 - b. Under the provisions of Section 20.30.1320 Findings of the San José Municipal Code, Development Variances. Neither the director, nor the planning commission on appeal, shall grant a development variance, except for fencing, unless it is found that:
 - i. Because of special circumstances uniquely applicable to the subject property, including (but not limited to) size, shape, topography, location, or surroundings, but expressly excluding any consideration of:
 - The personal circumstances of the petitioner; or
 - Any changes in the size or shape of the subject property made or occurring while the subject property was situate in the zoning district in which it is situated at the time of the filing of the petition, regardless of whether such changes were caused by the petitioner or his predecessors in interest, the strict application of the requirements and regulations prescribed in this title and referred to in Section 20.100.1300A., deprives such property of privileges enjoyed by other property in the vicinity of and in the same zoning district as the subject property; and
 - ii. The variance, subject to such conditions as may be imposed thereon, will not impair:
 - The utility or value of adjacent property or the general welfare of the neighborhood; and

- The integrity and character of the zoning district in which the subject property is situated.

Analysis: The subject site is on an approximately 3,100 square foot parcel and the maximum FAR allowance on the site is approximately 1,395 with required setbacks: 15 feet front, 5 feet for sides and 25 feet for rear. The existing resident's setbacks are approximately 10.5 feet front, 2 feet and 25 feet for sides and 8.5 feet for rear. The proposed project would reduce the front building setback to approximately 8'-1" feet (second floor 8'-1" feet and front porch allowed encroachment 5'7" feet), 5 feet for both sides and increase the rear to 12'9.5" feet. Additionally, cover parking is provided via a car lift. Given the small size and configuration of the lot and the surrounding context, requiring the project to meet the R-2 setbacks would further reduce the size of the allowed building footprint and bring the house of alignment with the existing massing and pattern of the existing neighborhood. Therefore, allowing a variance to modify the setbacks would help maintain the integrity and character of the zoning district and not impair the utility or value of the adjacent properties.

5. **Zoning Code Compliance.** The subject site is located in the R-2 Two-Family Residential Zoning District.
 - a. Under the provisions of Section 20.30.200 of the San José Municipal Code, the subject site would be required to conform to the following development standards:
 - i. *Setbacks.* The variance will reduce the setback requirements to require 8 feet front, 5 feet side and 12 feet rear setbacks. The proposed project is consistent with the variance setback requirements.
 - ii. *Height.* The proposed project is approximately 24 feet in height as measured at the top of roof and is consistent with the height limits.
 - iii. *Use.* Pursuant to Section 20.30.010, a one-family dwelling is permitted.
 - iv. *Parking.* Site includes two cover parking in an attached parage garage via a lift.

Analysis: Due to the site constraints a Development Variance accompanies the Single-Family House permit. See Development Variance Findings section above for further information and the project conforms to the remaining requirements of the zoning district.

6. **Environmental Review.** The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties. Section 15303(a) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) exempts new construction and conversion of small structures.
7. **Demolition Permit Findings.** Pursuant to Section 20.80.460 of the San José Municipal Code the following criteria have been considered by the Director of Planning to determine whether the benefits of permitting the demolition of the existing building outweighs the impacts of demolition:
 - a. The failure to approve the permit would result in the creation or continued existence of a nuisance, blight or dangerous condition;
 - b. The failure to approve the permit would jeopardize public health, safety or welfare;
 - c. The approval of the permit should facilitate a project which is compatible with the surrounding neighborhood.

- d. The approval of the permit should maintain the supply of existing housing stock in the City of San José;
- e. Both inventoried and non-inventoried buildings, sites and districts of historical significance should be preserved to the maximum extent feasible;
- f. Rehabilitation or reuse of the existing building would not be feasible; and
- g. The demolition, removal or relocation of the building without an approved replacement building should not have an adverse impact on the surrounding neighborhood.

Analysis: The project includes the demolition of an existing single-family residence with a detached garage for the construction of a new residents with an attached garage. The site would not be reducing the housing stock of the City of San Jose, as the new development would replacing an existing non-historic resident and would not have adverse impact on the surrounding neighborhood as analyzed in the variance and zoning findings.

8. Site Development Permit Findings. Chapter 20.100 of Title 20 of the San Jose Municipal Code establishes required findings for issuance of a Site Development Permit.

- a. The Site Development Permit, as approved, is consistent with and will further the policies of the General Plan and applicable Specific Plans and Area Development Policies.

Analysis: As described above, the project is consistent with the Residential Neighborhood General Plan land use designation and policies. There are no applicable specific plans and area development policies for the subject site.

- b. The Site Development Permit, as approved, conforms with the Zoning Code and all other provisions of the San José Municipal Code applicable to the project.

Analysis: As discussed above, the project conforms to the development regulations for the R-2 Two-Family Residential Zoning District with the allow variances as set forth in Section 20.30.200 of the San José Municipal Zoning Code.

- c. The Site Development Permit, as approved, is consistent with applicable City Council policies, or counterbalancing considerations justify the inconsistency.

Analysis: The project is consistent with City Council Policy 6-30 Public Outreach Policy for Land Use and Development Proposals.

- d. The interrelationship between the orientation, location, and elevations of proposed buildings and structures and other uses on-site are mutually compatible and aesthetically harmonious.

Analysis: The proposed project would develop the entire parcel and the proposed project would unify the design of the structures and replace an existing residents and detached garage into a single-family resident with an attached garage.

- e. The orientation, location and elevation of the proposed buildings and structures and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood.

Analysis: With the property constraints, the proposed design is primarily consistent with adjacent buildings. The building openings are also consistent with the architectural style, the overall style of the house is consistent on all sides and simplistic but sophisticated material selections match the overall design and neighborhood. The massing and elevations are similar to the surrounding residential developments.

In accordance with the findings set forth above, a Single-Family House Permit for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **approved**. The Director of Planning, Building, and Code Enforcement expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
 - a. Acceptance of the Permit by the applicant; and
 - b. Agreement of the applicant to be bound by, to comply with, and do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such permit.
2. **Permit Expiration.** This Permit shall automatically expire four years from and after the date of issuance hereof by said Director, if within such time period, a Building Permit has not been obtained. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the applicant's agreement to fully comply with all of said conditions.
4. **Conformance with Plans.** The development of the site shall conform to the approved Single-Family House plans date September 9, 2021.
5. **Anti-Graffiti.** During construction, the applicant shall remove all graffiti from buildings, walls and other surfaces within 48 hours of defacement. Upon project completion and/or transfer of ownership, the property owner, and/or Maintenance District shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
6. **Building Materials.** All building materials are to be those specified on the Approved Plan Set.
7. **Hours of Construction.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
8. **Demolition.** This permit allows the demolition of structures as noted on the approved plans.
9. **Garage Parking Spaces for Residential Projects.** All garage parking spaces on the approved Single-Family House and Development Variance Permit plans are to be used only as such and should be kept free and clear of all obstructions.
 - a. The proposed garage shall not contain living spaces or sleeping quarters and shall be limited to two plumbing connections to serve an appliance or fixture, and unconditioned space as defined in Title 24 of the San José Municipal Code.
10. **Compliance with associated Development Variance.** The project shall be consistent the zoning code as amendment and associate Development Variance (File No. V21-005)

11. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance.
12. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend buildings, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San Jose Municipal Code.
13. **Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the applicant will be required to have satisfied all of the following Public Works conditions. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following: <http://www.sanjoseca.gov/index.aspx?nid=2246>.
 - a. **Stormwater Peak Flow Control Measures:** The project is located in a non-Hydromodification Management area and is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).
 - b. **Flood Zone D:** The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood Zone D is an unstudied area where flood hazards are undetermined, but flooding is possible. There are no City floodplain requirements for Zone D.
 - c. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
14. **Revocation, Suspension, Modification.** This Single-Family House and Development Variance Permit may be revoked, suspended or modified by the Planning Director, or by the Planning Commission on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Single-Family House and Development Variance Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. a violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

APPROVED and issued on this **19th of January, 2022.**

Christopher Burton, Director
Planning, Building, and Code Enforcement

Deputy